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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 SHARON DE EDWARDS, M.D., FACOG,
14 INC., a corporation, and SHARON DE
15 EDWARDS, M.D., as President and officer
16 of the corporation.

17 Plaintiffs,

18 v.

19 INTERNAL REVENUE SERVICE,
20 UNITED STATES GOVERNMENT
21 DEPARTMENT OF THE TREASURY,
22 KATHY JAKABCIN, JOSEPH SMITH,
23 Revenue Officers, and Does I through 50,
24 Inclusive.

25 Defendants,

Case No.: C07-3102 WHA

REPLY TO OPPOSITION TO
APPLICATION AND MOTION FOR A
PRELIMINARY INJUNCTION UPON
ORDER TO SHOW CAUSE

26 Plaintiffs hereby replies to defendants' opposition.

27 **I. ADDITIONAL FACTS**

28 The first lawsuit for a refund was brought because defendants failed to advise or
account to Plaintiffs, for any and all payments they received and failed to even
acknowledge the payments. During the first case management conference on the matter,
defendants requested and Plaintiff agreed to dismiss the lawsuit in exchange for an
accounting report, detailing all payments received and the application of the payments. To
date, despite repeated assurance and extension have time, defendants have yet to submit

1 the accounting report. Instead defendants had their collection division, levy on 100% of
 2 THE CORPORATION's account receivable, while at the same time misappropriating,
 3 mis-applying, and not accounting for the corporate payments they received. In addition,
 4 the collection division applied THE CORPORATIONS payments to statutorily barred
 5 alleged tax liabilities of other entities, filing tax returns that had already been filed,
 6 assessing these returns and the applying THE CORPORATIONS payment to these
 7 unlawful assessment. Moreover, the Court and Plaintiff gave defendants ample time to
 8 submit their accounting report so that this matter could have been finalized, one way or
 9 the other. Defendants used that opportunity and goodwill, to engage in unlawful behavior.

10 The evidence is abundantly clear: 1) Defendants have collected \$352,226.30 from
 11 Plaintiff for which they have never accounted. The cancelled checks, explanation of
 12 benefits and supporting documents were submitted to defendants, consisting of 824
 13 exhibits. Defendants have not accounted to any regarding the application of these
 14 payments. *See, Exhibit "C" of the complaint.* 2) Plaintiff entire tax liability is
 15 \$189,101.50. *See, Exhibit "J" of the complaint.* 3) Defendants admitted mis-applying
 16 \$30,042.00 to other alleged tax that were not part of the agreed upon levies. *See, Exhibit*
 17 *"A" of the complaint, pages 3 through 4 of said exhibit.* 4) Defendants admitted being
 18 \$32,162.66 in payments being unresolved. *See, Exhibit "I" of the complaint.*

19 4) Defendants were unable to account for an additional \$58,000.00, which they never
 20 even mentioned, and 5) Defendants filed and used THE CORPORATION's payments to
 21 pay individual tax returns that Plaintiffs had already filed and paid. *See, Exhibit "C, E, F*
 22 *and G" of the complaint.*

23 II. LEGAL STANDARD

24 A. Plaintiff has no remedy at law

25 The time for the Appeals Division to submit their report as they requested has
 26 come and gone, despite repeated extensions of time. In the meantime, the defendants set
 27

1 out to destroy Plaintiff financially. If the levies, which are not being accounted for, and
 2 which greatly exceeds the tax liability is allowed to continue, Plaintiff will have no
 3 remedy at law, since she will lose her corporation and she will lose her home. Hence,
 4 unless the injunction is granted, no amount of money will undo her injury. *Greater*
 5 *Yellowstone Coalition v. Flowers* (10th Cir. 2003) 321 F.3d 1250.

6 At a minimum, defendants should be enjoined until the defendants' Office of
 7 Appeal, submits the accounting report.

8 B. Plaintiff has a both an interest and cognizable right to her property

9 Plaintiff sues both as the president and an officer of the corporation. She owns the
 10 corporation and has a right of ownership to its assets. It is a specious argument the
 11 defendants make the Plaintiff is an unsecured creditor. Hence, Plaintiff has standing to to
 12 bring this injunction.

13 C. The Corporation has paid all of its tax liabilities

14 Plaintiff submitted un-controverted evidence showing the tax liability owed, when
 15 each return was filed and the amount of payment made. Under no imaginable scenario,
 16 could payment of \$352,226.30, not extinguish tax liability of \$189,101.50. This is the
 17 reason why defendants cannot produce the accounting report and instead have resorted to
 18 creating other alleged tax liabilities, to which they are applying THE CORPORATION's
 19 payments. Plaintiff will prevail on the merits.

20 D. The balancing of Equities tips in Plaintiff's favor

21 Plaintiff has produced substantial un-controverted evidence, showing a pattern of
 22 abuse by two IRS agents. Essentially, they are bleeding THE CORPORATION, for
 23 alleged taxes owed, when in fact THE CORPORATION has fully paid its taxes. The
 24 defendants' not only stated in court that the accounting report will be forthcoming, they
 25 also stated the same to Plaintiff's tax attorney, Mr. Sharmat, on more than one occasion.
 26 The public has the right to have its servants perform ethically and lawfully. There is
 27 substantial evidence that these two agents performed unethically and unlawfully in an

1 attempt to intimidate, harass and punish Plaintiff for seeking her refund.

2 Having forestalled Plaintiff's claim for refund, defendants are coming into court,
3 with unclean hands, to oppose Plaintiff's application for an injunction to stop them from
4 taking any additional assets from THE CORPORATION and to force them to account for
5 what they took. The Court should grant this injunction.

6 The equities tips strongly in Plaintiff's favor since THE CORPORATION fully
7 paid its taxes, and defendants have not submitted one single word to the contrary.

8 **III. CONCLUSION**

9 Plaintiff has no remedy at law, she will lose both her corporation and her home, if
10 the unlawful levies are allowed to continue. The levies are unlawful because defendants
11 have admitted applying THE CORPORATION's payments to taxes alleged owed by
12 others that were not covered by the levies. Further, the levies are unlawful because THE
13 CORPORATION has fully paid the taxes that were covered by the levies. Defendants
14 have not submitted any evidence to the contrary.

15 Plaintiff respectfully request the Court to grant her Temporary Restraining Order
16 and after the hearing to grant her preliminary injunction.

17
18 Dated: 10/16/07

SEIBEL, FINTA & EDWARDS

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20 By: _____/S/_____
21 F. Anthony Edwards
22 Attorney for the Plaintiff
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